

Spending Cautions for CCRC Residents

by Jack Cumming, Carlsbad by the Sea

A nonprofit Continuing Care Retirement Community (CCRC) meets the requirements for tax exemption if it ...“ provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees...” (IRS Rev. Rul. 79-18, 1979-1 C.B. 194). Residents are comforted by the knowledge that they can continue to live in the CCRC even if their funds run out.

This reassurance can help offset the anxiety that many feel as CCRC fees increase. Still, this commitment is conditional. Residents are required not to dissipate their assets. The CCRC industry refers to the resulting rules as “spend down” rules. The term “spend down” is derived from the comparable requirement for Medicaid eligibility that people not have dissipated their assets to qualify, as one example, for long term care assistance intended for the indigent. As it turns out, reasonable people may differ as to what constitutes “dissipation.” It’s important for CCRC residents, and prospective residents, to clarify with the CCRC provider exactly how this complex requirement is administered.

Let’s examine a couple of examples to illustrate the pitfalls. A previously independent resident may lose capacity and require assisted living. Under a lifecare (Type A) contract it may be that the resident is entitled to transfer to the assisted living section of the community with no difference in recurring fee beyond the value of the difference in the meal plans. On the other hand the community may encourage such residents to continue in their independent living apartments with additional, needed services provided to them where they live. Alternatively, the resident may retain a caregiver, hired and paid by the resident, to provide needed services. Some CCRCs may consider such retention of a private caregiver as a violation of the “spend down” rules

and so the resident may inadvertently void the lifetime residence guarantee.

Clearly, this is a high standard, but a provider organization that is financially stressed may be forced to look for all opportunities to save money. This then leads to another area of ambiguity in applying the “spend down” rules. Consider the case of a resident who believes that she is relatively affluent. Her friends from her CCRC are going on a cruise, and they invite her to join them, and she does. Some providers can argue that cruising is an indulgence and, therefore, constitutes an unreasonable dissipation of assets. It’s easy for residents to imagine themselves more affluent than what a provider might think.

Think, for instance, of the case of a resident under a Type C (fee-for-service) contract. Such a resident is obligated to pay the full cost of skilled nursing services if they become required and such services can mount to \$9,000 a month or more. If our cruiser now has a disabling stroke, and is left confined to a wheelchair in the skilled nursing facility (the care center) for the rest of her life, the cost can be substantial. If she lives another eight years, which is not unimaginable, then the total cost can exceed \$850,000 which might easily consume her resources. If the CCRC then decides that she has violated the “spend down” rules because of her cruise, she can find herself transferred to an alternative facility that will accept Medicaid rates and she may end her days in substandard conditions away from her friends with a total loss of dignity.

CCRC residents need to be sure that they understand fully how the provider organization manages these sensitive matters. They should then get confirmation of the provider’s commitments in writing in terminology that is simple enough for all to understand and for all to be clear about just what the provider’s commitment is.

Visit CALCRA’s website: www.calcra.org

CALCRA is the only organization working solely for the interests of residents of California CCRCs

BERNARD WERTH, CALCRA DIRECTOR EXTRAORDINARE

by Walt Rozett

After many years of meaningful service to CALCRA Bernard Werth has concluded that his physical limitations and his need to care for his wife, Marianne, make it impractical for him to continue as a director. We all owe him a vote of thanks for his years of service.

Bernard was born in Germany and came to the United States along with his family in 1940, moving to San Francisco. He was in the U.S. Army from 1943 to 1946, starting as an infantryman and then, with his ability to speak German, was moved to Intelligence at Battalion Headquarters for the 5th Armored Division. His time in the army in Europe took him to St. Lo, Paris, Belgium, Luxembourg, the Siegfried line and then Hurtzen.

After the war he went to work in the financial

area, ending up as chief financial officer of a small publicly held company. He retired and moved to San Francisco Towers in 1997, where he has been a cohesive force in attracting residents there to become members of CALCRA and has provided active leadership in pursuing resident rights.

He joined the CALCRA board of directors in 1998. In 2004, after six years on the board, he was termed out. In 2004 Barbara Krings, who was president of CALCRA during most of those years, wrote in the Winter Newsletter: "... I became totally

dependent on Bernard and his unwavering vision of the ultimate goal of provider accountability. It is Bernard who is responsible for the many financial amendments to the regulations designed to give residents the tools that will ultimately force providers to divulge and hopefully justify their reasoning for constantly raising monthly care fees."

Bernard rejoined the CALCRA board in 2005 and served for several years as vice president. He also served on the Continuing Care Contracts Branch (CCCB) Statutes Review Task Force. He has been a member, since 2003, of the Continuing Care Advisory Committee providing advice to the CCCB overseeing California's CCRCs. He was a member of the Actuarial Study Committee that dealt with the question of the need for actuarial studies at CCRCs.

In the seven years that I was president of CALCRA, Bernard was a major contributor. Because we were both chief financial officers we had much in common, but we frequently had differing views - something that was extremely important and positive, enabling CALCRA to consider all sides of the issues and helping formulate meaningful legislation.

Although Bernard is no longer on the board, I am sure he will continue to contribute for as long as he is able to do so - something for which every member of CALCRA should be extremely grateful.

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Are Your Dues Due?

The CALCRA membership year runs from January – December. To find out if your dues are due, look at your mailing address on this newsletter. Above your name is a four-digit number. This is the year for which you have paid (e.g., "2011" or "2012"). If it doesn't say 2012, and you haven't submitted your membership renewal in the last couple of weeks, YOUR DUES FOR 2012 ARE NOW DUE.

Report on Board Retreat and Annual Meeting

A Board retreat was held on on October 4, the day before the Annual Meeting. The purposes of the retreat were to: 1) deepen working relationships of Board members; 2) provide clarity on the mission and functions of CALCRA; 3) develop a common understanding of the current CCRC environment and its implications for the work of CALCRA; and 4) develop action ideas that Board members can take to strengthen CALCRA's work and membership.

The retreat meeting was facilitated by Marti Roach, a trainer and certified facilitator with thirty-five years experience in the nonprofit and public sectors specializing in the design and facilitation of meetings and planning processes that enable groups to focus on problems and opportunities and make decisions and move forward. The agenda developed for our retreat filled the day with productive work. The decision was made to create committees to move ahead in three areas: nominating Board members/ governance, membership, and legislation. Additional information will be shared as the committees get organized and identify key actions they will undertake. Board Directors unanimously felt the retreat was positive: everyone contributed, and everyone learned something.

The Annual Meeting of the Board was convened following day, October 5, at University Retirement Community at Davis. President Margaret Griffin (University Retirement Community) presided. Minutes of the previous meeting were approved. Treasurer John McGrew (Air Force Village West) reported assets of \$33,802,54.

Election of Directors. President Griffin informed the Board that long time Director Bernard Werth (San Francisco Towers) had decided not to run for re-election. Mary Beth Tompane (Carlsbad by the Sea) was elected to fill this position with a 3-year term. The following Directors whose terms were expiring were reappointed for 3-year terms: Stefan Moses (The Village at Hemet); Carl Otto (Channing House);

Karen Robison (Eskaton Village); and Walt Rozett (University Retirement Community). The existing slate of officers (President: Griffin; Vice President: Rozett; Secretary: Barbara Krings, Eskaton Village, and Treasurer: McGrew) were re-elected for one-year terms.

Guest Speakers: Brian Augusta, CALCRA's legislative advocate, shared his perspective on the workings of the legislature, and the options for pursuing AB 748 (CALCRA's bill which would move financial oversight of CCRCs from the Dept of Social Services to the Dept of Insurance). As a two-year bill, AB 748 must be out of legislative committees by the end of January 2012. Another possibility would be to abandon AB 748 and introduce a new bill on the same subject in the Spring of 2012.

Bob Thompson, attorney for the Dept. of Social Services, Continuing Care Contracts Branch, was also a guest speaker at this meeting. He pointed out that the Branch is concerned with protecting the interests of both current and prospective residents, and that these interests can sometimes conflict. As to the general issue of financial monitoring of CCRCs, Bob pointed out that violation of bond covenants trigger corrective actions required by lenders; this is supplemental to any monitoring by the Branch. As to possible corrective actions, Bob noted the Branch may levy a fine, put the provider on probation or deny a Certificate of Authority to operate. However, education and consultation regarding a possible infraction is usually sufficient; so far it has not been necessary to employ stronger sanctions. He is spending a lot of time talking to providers regarding

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Speakers Available

Members of the board are available to speak at your community. Contact Walt Rozett at wrozett@urcad.org or (530) 747-6229 for more information.

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Board & Meeting Report con't

their strategies for remaining solvent. Bob encouraged residents to contact him with questions or problems at (916) 657-3138 or Robert.Thompson@dss.ca.gov.

The For-Profit Perspective related to CCRC governance was addressed by Stefan Moses (with input from Norm Eichberg, Vi at La Jolla) and Stan Goff (University Village at Thousand Oaks). Their input will be considered as CALCRA looks towards future legislative efforts.

Bylaws amended. Changes to the bylaws recommended by the ad hoc committee were reviewed. The bylaws were revised and amended.

New brochure. Walt Rozett spoke on the development of a new brochure. An initial supply will be printed with future revisions coordinated by the new Membership Committee.

Newsletter. Currently there are many variations in handling and mailing the newsletter, resulting in increased charges. We will continue to work with the printer to determine the most cost effective way to distribute the newsletter.

Next Board meeting: The Spring meeting will be held April 18, 2012, at Air Force Village West in Riverside.

AB 748 Update

AB 748 will transfer financial oversight of CCRCs from the Department of Social Services to the Department of Insurance. As mentioned in the Autumn Newsletter, AB 748 is a 2-year bill, meaning it will need to move through the various legislative committees in January. At this time we are continuing to consider what options will be most effective in passing this important legislation. It may remain a 2-year bill, or be reintroduced later.

Member Questions

Previous issues have included responses to questions from members. We want to encourage all members to share questions or concerns of interest to CCRC residents. Is there an issue at your community or an experience of your residents (positive or otherwise) that other CCRCs would benefit from knowing about?

Questions or items of interest related to CCRC resident matters may be sent to: Margaret Griffin, mgriffin@urcad.org, or 1515 Shasta Dr., #1401, Davis, CA 95616

WWW.CALCRA.ORG

We're on the Web!!!

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